

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LON REDGATE

Claimant

VS.

CITY OF WICHITA

Respondent

Self-Insured

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Docket No. 210,303

ORDER

Claimant requested Appeals Board review of the September 22, 1999, Review and Modification of Award entered by Administrative Law Judge Nelsonna Potts Barnes.

APPEARANCES

Claimant appeared by his attorney, Robert R. Lee of Wichita, Kansas. The respondent, a qualified self-insured, appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

Claimant suffered multiple injuries on February 1, 1996, while fighting a residential fire. At that time, claimant had been employed for over 15 years as a fireman by the respondent. After a regimen of conservative treatment, claimant settled his workers compensation claim with the respondent in an Agreed Award entered by the Administrative Law Judge on April 29, 1997. Claimant was awarded a 7.67 percent permanent partial general disability based on claimant's permanent impairment of function.

Claimant has filed an application requesting the April 29, 1997, Agreed Award be modified because claimant's work-related injuries from the February 1, 1996, accident have worsened and claimant's permanent functional impairment has increased.

The Administrative Law Judge found claimant had a 5 percent increase in his permanent functional impairment due to the worsening of the February 1, 1996, work injuries.

On appeal, claimant contends the Administrative Law Judge erred when she found claimant's work-related injuries had only increased by 5 percent. Claimant argues that the evidentiary record supports a 10.5 percent increase.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board concludes the Award should be affirmed.

Two board certified physical medicine physicians examined and evaluated claimant on the issue of whether claimant's permanent functional impairment had increased since the April 29, 1997, Agreed Award. Pedro A. Murati, M.D., who examined claimant at the request of his attorney, found claimant's permanent functional impairment had increased by 16 percent. George G. Fluter, M.D., found claimant's permanent functional impairment had increased by 5 percent.

The Administrative Law Judge in December 1996 had appointed Dr. Fluter as claimant's authorized treating physician. Dr. Fluter examined claimant on April 19, 1999, at a regular follow-up appointment and found claimant had a 5 percent increase in his permanent functional impairment. Dr. Fluter based the increase on a March 1999 MRI examination he had ordered in the course of claimant's medical treatment. Since Dr. Fluter was appointed by the Administrative Law Judge in December 1996, Dr. Fluter had seen claimant every three or four months on approximately 11 separate occasions.

The Administrative Law Judge adopted Dr. Fluter's opinion that claimant's permanent functional impairment had increased by 5 percent instead of Dr. Murati's 16 percent opinion.

But claimant argues there is no reason not to give equal weight to both physician's opinions which would result in a 10.5 percent increase.

The Appeals Board finds, for the reasons stated in the findings and conclusions of the Administrative Law Judge, that claimant's February 1, 1996, work injuries have worsened and claimant is entitled to an additional 5 percent permanent partial general disability. Therefore, the April 29, 1997, Agreed Award should be modified to increase claimant's permanent partial general disability by 5 percent resulting in a 12.67 percent permanent partial general disability award. The Appeals Board agrees with and adopts the Administrative Law Judge's findings and conclusions as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' September 22, 1999, Review and Modification of Award should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director